

EXHIBIT 42

<p>IN THE UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK</p> <p>-----) In re))Chapter 11) LEHMAN BROTHERS)Case No.) HOLDINGS INC., et al.,)08-13555 (JMP)))(Jointly Administered) Debtors.)) -----)</p> <p>VIDEO DEPOSITION UPON ORAL EXAMINATION of</p> <p>ANTHONY MICHAEL BRIAM</p> <p>On Wednesday, 19th June 2013</p> <p>Taken at the offices of: Weil Gotshal & Manges LLP, 110 Fetter Lane, London EC4A 1AY, England</p> <p>Reported by: Richard Harper</p> <p style="text-align: right;">Page 1</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">I N D E X</p> <table> <tr> <th>Deponent</th><th>Page</th></tr> <tr> <td>MR. ANTHONY MICHAEL BRIAM</td><td></td></tr> <tr> <td>Direct Examination by Mr. Isakoff</td><td>4</td></tr> <tr> <td>ReDirect by Mr. De Leeuw</td><td>194</td></tr> <tr> <td>Direct Examination by Mr. Isakoff</td><td>216</td></tr> </table> <p>-----</p> <p>Exhibits marked during this deposition</p> <table> <tr> <th>Exhibit</th><th>Page</th></tr> <tr> <td>43</td><td>98</td></tr> <tr> <td>44</td><td>122</td></tr> <tr> <td>45</td><td>146</td></tr> <tr> <td>46</td><td>149</td></tr> <tr> <td>47</td><td>151</td></tr> <tr> <td>48</td><td>152</td></tr> <tr> <td>49</td><td>153</td></tr> <tr> <td>50</td><td>186</td></tr> <tr> <td>51</td><td>202</td></tr> </table> <p style="text-align: right;">Page 3</p>	Deponent	Page	MR. ANTHONY MICHAEL BRIAM		Direct Examination by Mr. Isakoff	4	ReDirect by Mr. De Leeuw	194	Direct Examination by Mr. Isakoff	216	Exhibit	Page	43	98	44	122	45	146	46	149	47	151	48	152	49	153	50	186	51	202
Deponent	Page																														
MR. ANTHONY MICHAEL BRIAM																															
Direct Examination by Mr. Isakoff	4																														
ReDirect by Mr. De Leeuw	194																														
Direct Examination by Mr. Isakoff	216																														
Exhibit	Page																														
43	98																														
44	122																														
45	146																														
46	149																														
47	151																														
48	152																														
49	153																														
50	186																														
51	202																														
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>On behalf of the Lehman Brothers Holdings Inc: WEIL GOTSHAL & MANGES LLP 1300 Eye Street NW Suite 900 Washington, DC 20005-3314</p> <p>BY: MR. PETER D. ISAKOFF MR. KEVIN F. MEADE</p> <p>On behalf of the Claimant: SULLIVAN & CROMWELL LLP 125 Broad Street New York, New York 10004-2498 BY: MR. MARC DE LEEUW</p> <p>Videographer: Wendy Viner</p> <p>Marten Walsh Cherer Ltd., 1st Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.</p> <p>Court Reporter: Richard Harper Marten Walsh Cherer Ltd., 1st Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.</p> <p style="text-align: right;">Page 2</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">ANTHONY BRIAM</p> <p>(The deposition commenced at 9.33)</p> <p>THE VIDEOGRAPHER: Here begins video tape Number 1 in the deposition of Tony Briam in Re: Lehman Brothers Holdings Inc., et al, in the United States Bankruptcy Court, Southern District of New York, Chapter 11 Case Number 08-13555 (JMP). Today's date is June 19th 2013 and the time is 9.33 a.m.</p> <p>The video operator today is Wendy Viner of Marten Walsh Cherer Limited. This video deposition is taking place at Weil Gotshal & Manges at 110 Fetter Lane London EC4. Counsel, would you please voice identify yourselves and state who you represent.</p> <p>MR. ISAKOFF: Peter Isakoff and Kevin Meade of Weil Gotshal & Manges LLP for Lehman Brothers Holdings Inc.</p> <p>MR. DE LEEUW: Marc De Leeuw from Sullivan & Cromwell representing claimants, Canary Wharf and the witness, Tony Briam.</p> <p>THE VIDEOGRAPHER: The court reporter today is Richard Harper of Marten Walsh Cherer Limited. Would the court reporter please swear in the witness and we can proceed.</p> <p style="text-align: right;">Page 4</p>																														

<p>1 ANTHONY BRIAM</p> <p>2 matters involved in relation to 25 Bank Street,</p> <p>3 again from 2008 onwards, and I have discussed, as</p> <p>4 I say, discussed timing of matters and also the --</p> <p>5 a little of the background with the LBL</p> <p>6 negotiations.</p> <p>7 Q. Okay. What can you recall you and</p> <p>8 she said?</p> <p>9 MR. DE LEEUW: Again, the same</p> <p>10 instruction. Do not disclose legal advice that</p> <p>11 was given to Canary Wharf, or communications with</p> <p>12 Canary Wharf seeking legal advice.</p> <p>13 A. The discussions with Sarah will</p> <p>14 have included the attempts at negotiating a</p> <p>15 surrender with LBL and the inability to reach</p> <p>16 agreement on the terms of the surrender and,</p> <p>17 ultimately, the forfeiture letter of the 3rd</p> <p>18 December 2010. And the issues arising on the,</p> <p>19 I believe, the 30th September 2010, when the</p> <p>20 administrator to LBL was going to cease running</p> <p>21 the building systems and abandon the building.</p> <p>22 BY MR. ISAKOFF:</p> <p>23 Q. Did you discuss with her the issue</p> <p>24 as to whether Canary Wharf would serve a notice</p> <p>25 under section 7(a) of Schedule 4 to the LBL lease?</p> <p style="text-align: right;">Page 21</p>	<p>1 ANTHONY BRIAM</p> <p>2 Q. Can you briefly sketch your</p> <p>3 educational background?</p> <p>4 A. Briefly, I attended two primary</p> <p>5 schools, one called Steeple Claydon --</p> <p>6 S-T-E-E-P-L-E C-L-A-Y-D-O-N, which is in</p> <p>7 Buckinghamshire in England, and another one --</p> <p>8 that was for a year or a year and a half. Then I</p> <p>9 attended another primary school called Potton --</p> <p>10 P-O-T-T-O-N County primary school. The first one</p> <p>11 was from '55 to '56, the second one was from '56</p> <p>12 to '61. I then passed what we called -- it does</p> <p>13 not exist any more, it may do in certain</p> <p>14 counties -- the 11-Plus, which is an examination</p> <p>15 for your education, 11-Plus -- and went to a</p> <p>16 school in a town called Biggleswade --</p> <p>17 B-I-G-G-L-E-S-W-A-D-E, which is in Bedfordshire.</p> <p>18 Potton is also in Bedfordshire, coincidentally.</p> <p>19 I was a pupil there from 1961 to 1968. In 1968</p> <p>20 I went up to Clare College -- C-L-A-R-E, in</p> <p>21 Cambridge where I studied from 1968 to 1971.</p> <p>22 Then, from 1971 to 1972, I attended the College of</p> <p>23 Law in Lancaster Gate and passed my solicitors'</p> <p>24 finals exams in 1972 and then started my training</p> <p>25 as a solicitor with a firm in the West End of</p> <p style="text-align: right;">Page 23</p>
<p>1 ANTHONY BRIAM</p> <p>2 MR. DE LEEUW: That calls for a yes</p> <p>3 or no answer.</p> <p>4 A. I do not recall.</p> <p>5 BY MR. ISAKOFF:</p> <p>6 Q. Do you know what I am talking about</p> <p>7 when I refer to the notice under section 7(a) of</p> <p>8 the Schedule 4 of the LBL lease?</p> <p>9 A. I do, but I do not recall having</p> <p>10 discussed it with Sarah.</p> <p>11 Q. Do you know whether such a notice</p> <p>12 was ever drafted?</p> <p>13 A. I do not recall whether a notice</p> <p>14 was drafted.</p> <p>15 Q. Do you know whether there was any</p> <p>16 draft of any papers to be filed in the United</p> <p>17 States court seeking permission to serve such a</p> <p>18 notice?</p> <p>19 A. I am not aware of the filing of any</p> <p>20 such papers.</p> <p>21 Q. My question, maybe it was not</p> <p>22 clear, is: Do you recall whether there was any</p> <p>23 drafting of any such papers that could have been</p> <p>24 filed in a bankruptcy court in New York?</p> <p>25 A. I have no recollection of any such.</p> <p style="text-align: right;">Page 22</p>	<p>1 ANTHONY BRIAM</p> <p>2 London called Boodle Hatfield & Co -- B-O-O-D-L-E,</p> <p>3 Hatfield -- H-A-T-F-I-E-L-D. The training lasted</p> <p>4 from 1972 to 1974, whereupon I qualified as a</p> <p>5 solicitor.</p> <p>6 Q. And how have you been employed</p> <p>7 since?</p> <p>8 A. From 1974, when I qualified as a</p> <p>9 solicitor to 1975, I remained as a qualified</p> <p>10 solicitor at Boodle Hatfield, handling</p> <p>11 conveyancing, as we called it then, real estate,</p> <p>12 and a bit of private client and trust work as</p> <p>13 well. I moved, in roughly February 1975, from</p> <p>14 Boodle Hatfield to -- over in the west end of</p> <p>15 London as I mentioned -- to Allen & Overy, who are</p> <p>16 based in the City of London. I was there from '75</p> <p>17 to '76. I then left Allen & Overy and joined, in</p> <p>18 1976, June 76, Clifford-Turner -- there is a</p> <p>19 hyphen between Clifford and Turner -- where</p> <p>20 I became a partner on the 1st May 1981.</p> <p>21 Clifford-Turner merged with Coward Chance on 1st</p> <p>22 May 1987 and became Clifford Chance, and I have</p> <p>23 been a partner there since. So, through from 1st</p> <p>24 May '81 to date, although there was the merger in</p> <p>25 1987, and I have specialised in real estate</p> <p style="text-align: right;">Page 24</p>

1 ANTHONY BRIAM
2 A. Umm hmm.
3 Q. "...will proceed to close down the
4 building." Do you see that?
5 A. No, that is not from Sarah Dawson.
6 That, "My clients will proceed to close down the
7 building", is from Katie Bradford, because it was
8 her clients, LBL, who were going to close down the
9 building.
10 Q. Can you tell me where Sarah
11 Dawson's comments begin and where they end, with
12 respect to that point as to ----
13 A. Well, I cannot ----
14 Q. I have to finish my question -- as
15 she has indicated -- as Sarah has indicated in her
16 e-mail to Katie that she has, "added responses to
17 the two points you have raised below"?
18 A. Without the different colours it is
19 not possible to be absolutely certain, although my
20 belief, having read this for the first time --
21 I say perhaps for the second time, as I was copied
22 in on 23rd September 2010 -- my belief is that
23 Sarah's response starts after the word "building"
24 in the fourth line.
25 Q. I am handing you what has been

Page 65

1 ANTHONY BRIAM
2 previously marked as exhibit 29, which is CW 587
3 to 89. This time you are one of the
4 correspondents on this chain. If you will turn to
5 the last page this is from Beatrice Taylor. Who
6 is Beatrice Taylor?
7 A. Beatrice Taylor is a transactional
8 real estate lawyer at Linklaters.
9 Q. And who is Katie Bradford?
10 A. Katie Bradford is a real estate
11 litigator at Linklaters, and you will see from
12 exhibit 28, page 1, her sign off is "Katie
13 Bradford, Partner, Property and Finance
14 Litigation."
15 Q. Okay. In her first line,
16 Ms. Taylor in her e-mail in the last page of this
17 exhibit says: "Further to our telephone
18 conversation, please see attached mark-up of the
19 Agreement For Surrender which remains subject to
20 our client's comments." Do you recall this
21 conversation that she is referencing?
22 A. No, I do not.
23 Q. Do you recall when you had sent any
24 changes to the draft surrender agreement that
25 Mr. Jarvis' letter sent to your client?

Page 66

1 ANTHONY BRIAM
2 A. I do not and it may not have been
3 me that sent it.
4 Q. If you will turn to the second page
5 of this exhibit, this is your response to
6 Ms. Taylor, would you agree, at the bottom?
7 A. Yes.
8 Q. This is now 26th September and you
9 write in the second paragraph: "I confirm that it
10 will be impossible for CW to take a surrender on
11 30 September, due to the necessity for
12 securitization approval and approval from the US
13 court of the settlement of the claims against LBHI
14 (although it is hoped that these approvals will be
15 forthcoming reasonably shortly)." Was that true,
16 that it was impossible for CW to take a surrender
17 for those two reasons?
18 A. It was commercially impossible,
19 yes.
20 Q. Tell me why?
21 A. First of all, without
22 securitization approval Canary Wharf would have
23 been in breach of their obligations under the
24 securitization, would have probably resulted in --
25 could have, I say probably -- may have resulted in

Page 67

1 ANTHONY BRIAM
2 default action by the securitization trustees.
3 Q. What, if anything, had been done to
4 secure approval as of the time of this e-mail?
5 A. I do not recall exactly what would
6 have been done but certainly there would have been
7 discussions with securitization trustees, with
8 which I had no involvement whatsoever.
9 Q. You would not have had any
10 involvement?
11 A. No.
12 Q. Would you have been advised about
13 them?
14 A. I would have been aware that
15 securitization trustee approval would be required,
16 but not part of my role. That would be part of
17 the role of those who were more adept in such
18 matters.
19 Q. Okay. Do you know what it would
20 have taken to get securitization trustee approval?
21 A. No.
22 Q. But would it have required the
23 provision of substitute properties for the
24 property that was being surrendered?
25 MR. DE LEEUW: Objection to form.

Page 68

1 ANTHONY BRIAM
 2 You can answer.
 3 **A. It could well have done but I would**
 4 **need to check that with a colleague.**
 5 BY MR. ISAKOFF:
 6 Q. Okay. Was it, putting aside
 7 securitization approval, would it have been
 8 impossible for CW to take a surrender on 30
 9 September because there had not yet been approval
 10 from a US court of a settlement of claims against
 11 LBHI?
 12 **A. The impossibility would be that if**
 13 **a surrender were taken without the court approval**
 14 **having been obtained to a deal with LBHI,**
 15 **I understand that the position would have been**
 16 **that there would have been a very strong argument**
 17 **by LBHI that its liabilities going forward had**
 18 **been expunged by the surrender without its**
 19 **involvement in the surrender.**
 20 Q. Can you explain to me what -- first
 21 of all, would you have agreed with that argument?
 22 **A. Given the preceding breach by the**
 23 **announcement that no rent was going to be paid**
 24 **going forward, back from the end of March,**
 25 **I believe, 2010, Canary Wharf would have had their**

Page 69

1 ANTHONY BRIAM
 2 **rights under the indemnity, but this is something**
 3 **which was sensible for Canary Wharf not to allow.**
 4 **I say not to allow, not to enter into.**
 5 Q. Would they have had a right under
 6 section 7(a) of the Schedule 4 of the lease to
 7 serve a substitute lease on LBHI at that
 8 point ----
 9 **A. No.**
 10 Q. -- once there was a surrender?
 11 **A. No.**
 12 Q. I am showing you what has been
 13 previously marked as exhibit 3, CW 11478 to 81.
 14 Can you identify the document?
 15 **A. Yes, I have it in front of me.**
 16 Q. What is it?
 17 **A. It is Schedule 4 to the lease.**
 18 Q. If you look at 7(a), it says: "The
 19 surety hereby further covenants with the Landlord
 20 and the Management Company that:- (i) if the
 21 Crown or a liquidator or trustee in bankruptcy
 22 shall disclaim or surrender this lease..." Then
 23 it continues: "THEN the Surety [Landlord] shall
 24 if the Landlord by notice in writing given to the
 25 Surety within one hundred and eighty days..." and

Page 70

1 ANTHONY BRIAM
 2 so on, can tender a new lease. Why would that not
 3 apply if you had accepted a surrender of LBL's
 4 lease on September 30 2010, as discussed in your
 5 e-mail to Ms. Taylor?
 6 **A. 7(a)(ii) would not apply because**
 7 **the lease was not forfeited. 7(a)(iii) would not**
 8 **apply because the tenant has not ceased to exist.**
 9 **7(a)(i), relates to the circumstances set out in**
 10 **7(a)(i), which are: "If the Crown or a liquidator**
 11 **or trustee in bankruptcy shall disclaim or**
 12 **surrender this Lease." We are not here involved**
 13 **with the Crown disclaiming or surrendering, we are**
 14 **not involved with a liquidator disclaiming or**
 15 **surrendering, and a trustee in bankruptcy is the**
 16 **-- effectively the liquidator of an individual,**
 17 **not of a company. There is no concept of a**
 18 **trustee in bankruptcy of a company here. It is**
 19 **either an administrator or a liquidator, they were**
 20 **not a trustee in bankruptcy.**
 21 Q. So if any surrender agreement had
 22 been entered into at any time, as between LBL and
 23 Canary Wharf, you are saying that the remedy
 24 available under section 7 of this schedule would
 25 simply never apply?

Page 71

1 ANTHONY BRIAM
 2 **A. That is my understanding.**
 3 Q. If that is true then why were you
 4 not discussing forfeiture of the lease with LBL in
 5 September 2010?
 6 **A. There was the potential for the**
 7 **deal with LBHI to be negotiated and concluded in**
 8 **advance of a surrender.**
 9 Q. Why would that be better for Canary
 10 Wharf than a forfeiture?
 11 **A. A forfeiture under UK law of a**
 12 **lease with the tenant in administration requires**
 13 **leave of the court, without the consent of the**
 14 **administrator.**
 15 Q. Why would you not -- why would it
 16 not be to your advantage to have an agreement with
 17 the administrator of forfeiture, rather than
 18 surrender?
 19 MR. DE LEEUW: I think you are now
 20 asking Mr. Briam's hypothetical advice about what
 21 he might have concluded would be best for Canary
 22 Wharf. I think that is a little bit outside the
 23 bounds. I am letting you try to go, but I do not
 24 want to get into a point where he is really just
 25 testifying about the potential strategy that

Page 72

<p>1 ANTHONY BRIAM</p> <p>2 Canary Wharf might have employed.</p> <p>3 BY MR. ISAKOFF:</p> <p>4 Q. Then let me ask you about your</p> <p>5 actual strategy. Did you actually consider</p> <p>6 approaching Canary Wharf -- I am sorry --</p> <p>7 approaching LBL in and about the fall of 2010</p> <p>8 about a forfeiture agreement, as distinguished</p> <p>9 from surrender, so as to be able to exercise</p> <p>10 whatever remedies you may have had under section 7</p> <p>11 of Schedule 4?</p> <p>12 MR. DE LEEUW: I will ask you to</p> <p>13 try to rephrase that question. You are asking him</p> <p>14 now about what he was thinking about potential</p> <p>15 legal advice. I think that is going a little too</p> <p>16 far. You can ask him if the subject matter was</p> <p>17 discussed or communicated, but to just ask him</p> <p>18 what was in his mind about potential legal advice,</p> <p>19 that is going a little too far.</p> <p>20 BY MR. ISAKOFF:</p> <p>21 Q. Okay. Did you ask us with anybody</p> <p>22 the potential for a forfeiture agreement, as</p> <p>23 distinguished from a surrender agreement, between</p> <p>24 Canary Wharf and LBL in September or October 2010?</p> <p>25 A. I do not recall specifically having</p> <p style="text-align: right;">Page 73</p>	<p>1 ANTHONY BRIAM</p> <p>2 then saying that Mr. Briam said something that the</p> <p>3 e-mail does not say, so I object to it.</p> <p>4 BY MR. ISAKOFF:</p> <p>5 Q. You may answer.</p> <p>6 A. My confirmation that it was</p> <p>7 impossible for CW to take a surrender due to those</p> <p>8 two necessities would have been taken after -- my</p> <p>9 words would have followed instructions from Canary</p> <p>10 Wharf Group.</p> <p>11 Q. But it is part of the point that</p> <p>12 Canary Wharf did not want to be at risk of losing</p> <p>13 its claim against LBHI by taking a surrender prior</p> <p>14 to having the LBHI claim fixed in the US court?</p> <p>15 A. That was certainly a concern of</p> <p>16 Canary Wharf Group at the time.</p> <p>17 Q. Turn to the first page of exhibit</p> <p>18 29, Bates number CW 587 on it. At the very top</p> <p>19 you write to Katie Bradford and Beatrice Taylor:</p> <p>20 "Katie/Beatrice - I'm in a meeting at Canary Wharf</p> <p>21 at present - please can one of you call me on my</p> <p>22 mobile" -- and then you put the number in --</p> <p>23 "urgently". Do you recall having sent that e-mail</p> <p>24 and having that telephone conversation?</p> <p>25 A. I do not.</p> <p style="text-align: right;">Page 75</p>
<p>1 ANTHONY BRIAM</p> <p>2 had those discussions.</p> <p>3 Q. Going back to exhibit 28, as</p> <p>4 I understand -- tell me, is what you are saying to</p> <p>5 Ms. Taylor that Canary Wharf was unable to take</p> <p>6 the risk of losing its claim against LBHI by</p> <p>7 taking a surrender prior to the time it had court</p> <p>8 approval of any settlement of claims with LBHI?</p> <p>9 Is that what you mean by impossible?</p> <p>10 MR. DE LEEUW: Objection.</p> <p>11 A. Sorry, which e-mail are you</p> <p>12 referring me to?</p> <p>13 BY MR. ISAKOFF:</p> <p>14 Q. I am referring you to your e-mail</p> <p>15 to Beatrice Taylor on September 26th 2010 at</p> <p>16 6.35 p.m. I am asking whether it is what you are</p> <p>17 saying to her, when you say it is "impossible for</p> <p>18 CW to take a surrender on September 30" -- absent</p> <p>19 -- "approval from the US court of the settlement</p> <p>20 of the claims against LBHI", that you were</p> <p>21 unwilling for Canary Wharf to take the risk that</p> <p>22 taking the surrender would cause a loss of those</p> <p>23 claims?</p> <p>24 MR. DE LEEUW: I object. You just</p> <p>25 read that sentence by excising a portion of it and</p> <p style="text-align: right;">Page 74</p>	<p>1 ANTHONY BRIAM</p> <p>2 Q. Do you know what the urgency was on</p> <p>3 September 27th 2010?</p> <p>4 A. Specifically, I do not.</p> <p>5 Q. What is your recollection of the</p> <p>6 events of September 30th 2010?</p> <p>7 A. My recollection of the events on</p> <p>8 30th September were that there was a letter from</p> <p>9 the administrators, or one of the administrators,</p> <p>10 confirming that they would be closing down the</p> <p>11 building, in essence, with tenant -- with the</p> <p>12 administrators no longer having any need to occupy</p> <p>13 or continue providing the services in the building</p> <p>14 -- services to the building. That was a very</p> <p>15 serious issue for Canary Wharf Group, because</p> <p>16 throughout their dealings with this building from</p> <p>17 September 2008, following the insolvency, Canary</p> <p>18 Wharf were trying to do everything they could to</p> <p>19 mitigate the losses. Canary Wharf were very</p> <p>20 concerned that by the building closing,</p> <p>21 effectively, and the systems being turned off, the</p> <p>22 fire, other emergency systems being turned off,</p> <p>23 that the building would fast deteriorate. They</p> <p>24 urgently, therefore, needed to have an arrangement</p> <p>25 in place with the administrator under which Canary</p> <p style="text-align: right;">Page 76</p>

1 ANTHONY BRIAM
 2 **have been apparent to the world at large, they**
 3 **would have no business in taking up a new lease**
 4 **and, effectively, this was the end of the matter.**
 5 **We would not have needed -- in our view, that was**
 6 **the end of the matter and notice expressing itself**
 7 **to be on the face of it pursuant to paragraph 7(a)**
 8 **could have been served but was not.**
 9 Q. Okay. Isn't it a fact that there
 10 were reasons why Canary Wharf would not want to
 11 serve a notice under the section 7(a) at that
 12 point?
 13 A. **By Friday December 10th, I am not**
 14 **certain but reasonably confident that the draft**
 15 **agreement in circulation would have contained a**
 16 **provision that (a), confirming that we had not and**
 17 **(b), saying that we would not. So JP Morgan had**
 18 **made their views clear, as you are aware, and I am**
 19 **now aware again of Jeremy Clay's e-mail on the**
 20 **topic.**
 21 Q. So JP Morgan's views had been clear
 22 since at least December 3, that it did not want
 23 Canary Wharf to do so and that if it did, it would
 24 not proceed to a simultaneous exchange and
 25 completion, as actually did occur on December

Page 185

1 ANTHONY BRIAM
 2 20th, correct?
 3 A. **That is a statement made by**
 4 **Mr. Clay's e-mail, yes.**
 5 (Exhibit 50 was marked for identification)
 6 Q. We have marked as exhibit 50 a
 7 document Bates stamped CW 30796 thru 801. The
 8 first page contains an e-mail from ----
 9 A. **Can I just -- you say to 801? This**
 10 **only goes to 798. My apologies for interrupting**
 11 **but ----**
 12 MR. DE LEEUW: Mine only goes to
 13 798 as well. Do you have an attachment? If you do
 14 I do not.
 15 MR. ISAKOFF: Okay. I guess that
 16 is not part of what we have in the folder.
 17 A. **My apologies.**
 18 BY MR. ISAKOFF:
 19 Q. That is all right. Jeremy Clay, at
 20 the e-mail at the bottom says: "I refer to
 21 various exchanges yesterday." This is written,
 22 evidently, on Monday, December 13. Do you recall
 23 having any kind of communications with Jeremy Clay
 24 on Sunday December 12?
 25 A. **We were working through the weekend**

Page 186

1 ANTHONY BRIAM
 2 **on various aspects of this deal. I am sure there**
 3 **were exchanges but the contents of them I would**
 4 **not recall in any detail.**
 5 Q. Do you know whether they were
 6 written, as opposed to oral?
 7 A. **I cannot recall. They may have**
 8 **been both.**
 9 Q. I would represent to you that we
 10 have not received any written documents that come
 11 from December 12th on this subject and hope to get
 12 those from you if you have not -- if they have not
 13 been discarded before July 10th. Do you recall
 14 whether there were phone calls on December 12th?
 15 A. **I cannot recall on a particular day**
 16 **I had phone calls that length of time ago, but it**
 17 **is apparent from what Jeremy Clay is saying here**
 18 **that there must have been communications.**
 19 Q. On December 20th were you at the
 20 closing?
 21 A. **Yes, I was.**
 22 Q. And how many different steps were
 23 there in the closing?
 24 A. **There were very many. I have no**
 25 **recollection of all of them and the closing agenda**

Page 187

1 ANTHONY BRIAM
 2 **as such, I am aware of the overall nature of what**
 3 **was happening.**
 4 Q. When you say "agenda" what are you
 5 referring to?
 6 A. **Well, I would be referring to the**
 7 **fact that in a room such as this, there would have**
 8 **been documents all laid out on the table and it**
 9 **would have been agreed in which order everything**
 10 **would happen.**
 11 Q. So it was a very carefully
 12 orchestrated event?
 13 A. **It was an organised event. How**
 14 **careful the orchestration is, is probably a very**
 15 **subjective matter. It was much more carefully**
 16 **orchestrated by virtue of the fact that I would**
 17 **have had extremely little involvement in its**
 18 **orchestration.**
 19 Q. So you were not the master of
 20 ceremonies?
 21 A. **Better people than I at organising**
 22 **these things would have probably put everything**
 23 **out and sorted ----**
 24 Q. Who was in charge of making sure
 25 that the agenda was followed and that things

Page 188

<p>1 ANTHONY BRIAM</p> <p>2 followed in the proper order?</p> <p>3 A. Probably Justin Turner, who has</p> <p>4 already been mentioned today, and perhaps Angela</p> <p>5 Kearns -- K-E-A-R-N-S, and Ian Painter(?), but --</p> <p>6 and there would have been people there from our</p> <p>7 tax department. I say people, it may be it was</p> <p>8 one person. I cannot recall the numbers of people</p> <p>9 that would have been there.</p> <p>10 Q. Was Clifford Chance in charge of</p> <p>11 the closing?</p> <p>12 A. Clifford Chance and Mayer Brown</p> <p>13 would have been -- it was at Clifford Chance's</p> <p>14 offices, but both Clifford Chance and Mayer Brown</p> <p>15 would have been there checking that everything was</p> <p>16 as it should be.</p> <p>17 Q. Was it important that steps proceed</p> <p>18 in a certain order?</p> <p>19 A. On a closing like this, yes it</p> <p>20 would be.</p> <p>21 Q. If there had not been a</p> <p>22 simultaneous exclusion and completion would that</p> <p>23 have complicated matters, or simply stretched them</p> <p>24 out?</p> <p>25 A. It -- if they had not been</p> <p style="text-align: right;">Page 189</p>	<p>1 ANTHONY BRIAM</p> <p>2 overlooks the building.</p> <p>3 BY MR. ISAKOFF:</p> <p>4 Q. Let me show you what has been</p> <p>5 previously marked as exhibit 15. This is Bates</p> <p>6 stamped CW 5282 thru 400?</p> <p>7 A. I have it in front of me.</p> <p>8 Q. Is this the final SPA?</p> <p>9 A. Yes.</p> <p>10 Q. And who was the seller?</p> <p>11 A. The seller ----</p> <p>12 MR. DE LEEUW: Objection. Go</p> <p>13 ahead.</p> <p>14 A. -- as defined in the agreement, is</p> <p>15 HQCB Investments Limited.</p> <p>16 BY MR. ISAKOFF:</p> <p>17 Q. And that is a Canary Wharf limited</p> <p>18 entity?</p> <p>19 A. Correct.</p> <p>20 Q. If you will turn to the page 35 of</p> <p>21 the agreement, where the Bates number ends 5319,</p> <p>22 at the very bottom there is a provision, 11.3.2.</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. It says: "The seller hereby</p> <p style="text-align: right;">Page 191</p>
<p>1 ANTHONY BRIAM</p> <p>2 simultaneous and, by that exchange of agreements</p> <p>3 happening on one day and completion on another day</p> <p>4 after that, then it would be -- it would have</p> <p>5 taken longer overall simply because, in order to</p> <p>6 do the contract, you would have been checking</p> <p>7 everything, that it was in agreed form and there</p> <p>8 were no gaps and so on and so forth. Then you</p> <p>9 would be coming back later on and checking that</p> <p>10 all the closing documents were in the same as had</p> <p>11 been attached to the contract. So I suspect that</p> <p>12 it would have been a more laborious undertaking to</p> <p>13 do them separately. I say more laborious, I mean</p> <p>14 not majorly significantly more laborious.</p> <p>15 Q. To your understanding, would</p> <p>16 JP Morgan have taken possession of the premises</p> <p>17 prior to completion if it had not been a</p> <p>18 simultaneous exchange and completion?</p> <p>19 MR. DE LEEUW: Objection.</p> <p>20 A. I do not recall that issue being</p> <p>21 discussed and in fact, in terms of physical</p> <p>22 occupation JP Morgan did not, so far as I know,</p> <p>23 beneficially occupy the building for some time.</p> <p>24 I can depose that to an extent from my own</p> <p>25 knowledge, through sitting in an office which</p> <p style="text-align: right;">Page 190</p>	<p>1 ANTHONY BRIAM</p> <p>2 warrants that no notice or demand has been served</p> <p>3 on or given to LBHI pursuant to paragraph 7(a) of</p> <p>4 Schedule 4 to the Lehman Lease." Do you see</p> <p>5 that?</p> <p>6 A. I do.</p> <p>7 Q. That was a true statement, right?</p> <p>8 A. That is correct.</p> <p>9 Q. In fact, nobody had given notice to</p> <p>10 LBHI pursuant to paragraph 7(a) of Schedule 4 to</p> <p>11 the Lehman lease, correct?</p> <p>12 A. Not so far as I am aware.</p> <p>13 MR. ISAKOFF: Why don't we take a</p> <p>14 few minutes and see if we have any further</p> <p>15 questions. Give us a few minutes.</p> <p>16 (Off the record at 4.57)</p> <p>17 (Back on the record at 5.03)</p> <p>18 BY MR. ISAKOFF:</p> <p>19 Q. Mr. Briam, I have no further</p> <p>20 questions at this time. As I indicated on a</p> <p>21 couple of occasions earlier in the testimony and</p> <p>22 I do not -- it is not your fault for not</p> <p>23 understanding what the obligations are of Canary</p> <p>24 Wharf in response to our discovery requests but</p> <p>25 unfortunately, in our view, they failed to make</p> <p style="text-align: right;">Page 192</p>

1 ANTHONY BRIAM
2 **that ----**
3 Q. You see there the amount set forth
4 in paragraph 4 hereof is \$399,311,280 -- million
5 dollars ----
6 A. Yes.
7 Q. -- is that roughly, if you know,
8 similar to £262.5 million?
9 A. **I should have let you finish asking**
10 **your question, sorry. It does now fall into place**
11 **that that was a sum which, at the exchange rates**
12 **current in 2010, towards the end of 2010, would**
13 **have been the same amount and, indeed, was**
14 **referred to, I think, in Mr. Iacobescu's e-mail**
15 **when he talked about plus or minus 5% on 260**
16 **million, or something like that.**
17 Q. Thank you. So now, going back, now
18 that you have looked through these documents, is
19 your recollection refreshed as to the reason for
20 the change from September 30th 2010 to November
21 12th 2010 to insert an allowed claim of \$262.5
22 million(sic) against LBL ----
23 A. Yes, it is.
24 MR. ISAKOFF: Objection to form.
25 BY MR. DE LEEUW:

Page 205

1 ANTHONY BRIAM
2 Q. What is your recollection as to the
3 reason for the change to add £262.5 million to the
4 LBHI surrender agreement?
5 A. **Canary Wharf Group was being asked,**
6 **as part of the settlement arrangements in relation**
7 **to their claim in the New York courts, to**
8 **represent that their claims had not been**
9 **disallowed or expunged or acknowledged in an**
10 **amount less than paragraph 4, which, let us assume**
11 **on the exchange rates would be the 262.5 million.**
12 **Given that that representation was being made, if**
13 **Canary Wharf Group had breached that**
14 **representation and gone ahead with the zero**
15 **acknowledgment of claim, this agreement -- there**
16 **would have been the consequences for this**
17 **agreement for breach of representation.**
18 Q. When you talk about this agreement,
19 you mean the agreement between Canary Wharf and
20 LBHI to settle the claim?
21 A. Correct. The agreement attached to
22 the e-mail of Thursday, November 4 ----
23 Q. Exhibit 51?
24 A. Exhibit 51, yes.
25 Q. Can I ask you to take a look at

Page 206

1 ANTHONY BRIAM
2 exhibit 4, which is an e-mail exchange on November
3 26th 2010, which you were asked about earlier
4 today. Do you have that?
5 A. I do.
6 MR. ISAKOFF: Hold on a second.
7 I do not have that in front of me. Okay.
8 BY MR. DE LEEUW:
9 Q. Do you see on the second page of
10 exhibit 4, this is an e-mail from Katie Bradford
11 to yourself on November 26th 2010. Is that right?
12 A. Correct.
13 Q. You see the 8th paragraph, which
14 begins: "However, and forgive us..." Do you see
15 that?
16 A. Yes.
17 Q. The third sentence in that
18 paragraph, the paragraph on the second page of
19 exhibit 4 says: "In the circumstances of
20 agreement 3 in the draft settlement [agreement]
21 with LBHI (namely that your client does not
22 currently anticipate entering into a lease for all
23 or substantially of the premises within 12 months
24 of the court ratifying the LBHI settlement)..."
25 Then it goes on. Do you see that?

Page 207

1 ANTHONY BRIAM
2 A. Yes, I do.
3 Q. Can you look back at exhibit 51,
4 the document you had in front of you. Do you see
5 that?
6 A. Yes.
7 Q. That paragraph 3, do you believe
8 that Ms. Bradford at Linklaters is referring to?
9 MR. ISAKOFF: Objection to form.
10 A. Yes.
11 BY MR. DE LEEUW:
12 Q. The settlement agreement?
13 A. Yes, the settlement agreement must
14 be what she is referring to.
15 Q. Understood. So now, with the
16 benefit of exhibit 4, I will ask: Do you have any
17 recollection as to whether LBL had any knowledge
18 about the negotiations going on with LBHI about
19 this very point?
20 MR. ISAKOFF: Object to form.
21 A. These words indicate that they have
22 seen the draft -- that Katie Bradford had seen the
23 draft settlement agreement because had she not
24 seen it, she would not have been able to recite
25 paragraph 3, the existence of paragraph 3, or

Page 208

52 (Pages 205 to 208)